Supreme Court of the United States.

Nos. 10 and 11.—October Term, 1906.

Seaboard Air Line Railway, Plaintiff in Error, *vs.* The State of Florida upon the Relation of W. H. Ellis, as Attorney General of said State, et al.	In error to the Supreme Court of the State of Florida.

[December 3, 1906.]

These cases resemble the one immediately preceding, in this, that review is sought in each of an award of a peremptory writ of mandamus by the Supreme Court of Florida to compel compliance with an order of the State railroad commission. In the first the court sustained an order of the commission, made June 25, 1903, and to go into effect July 1, 1903, prescribing rates on the Florida West Shore Railway, charged to be under the control and management of the plaintiff in error, 48 Florida, 129–152, the order being in these words: "It is hereby ordered and adjudged by the Railroad Commission of the State of Florida that the following schedule of freight tariffs shall be allowed and adopted for freight shipments over the Seaboard Air Line Railway, to apply only to shipments from or destined to points on the Florida West Shore Railway, and from points on the Florida West Shore Railway to points on the Florida West Shore Railway, and the same shall be put into operation and be effective on the 1st day of July, A. D. 1903," and followed by the schedule; and in the second, it enforced the order of the commission in respect to phosphates (which was noticed by us in the opinion in the preceding case). 48 Florida, 150.

The proceedings before the commission are not disclosed, nor is there anything to show upon what the orders were based. There was notice and a hearing. And in the pleadings in the first case appear the contracts between the plaintiff in error and the Florida West Shore Railway.

In the Supreme Court the relator presented no testimony, relying upon the statutory presumption which attends an order of the commission. The defendant introduced the report which it had made to the railroad commission for the year ending June 30, 1904, and the report of the railroad commission to the governor of the State for the year ending March 1, 1904, and upon these two reports the cases were considered by the Supreme Court.

Mr. Justice BREWER delivered the opinion of the Court.

There are no special findings of facts in these cases, and only from an examination of the opinions filed by the Supreme Court can we ascertain what its conclusions were or upon what its judgments were based. It may well be doubted whether a railroad company can rely, as evidence in its own behalf, upon a report made and filed by it, and while a report of the railroad commission to the governor may undoubtedly be used against it in an application made at its instance to secure compliance with one of its orders, yet there is little in its report which throws light upon the questions in these cases.

Referring to the first case, in which is presented the reasonableness of an order made by the commission respecting local rates for business on, to or from the Florida West Shore Railway, we find it stated in the brief of the plaintiff in error that the railroad commission on December 22, 1903, made an order, to go into effect July 1, 1904, reducing local freight rates generally; that from this order no appeal was taken; that in November, 1903, an order was made reducing by ten per cent rates on certain freights going over two or more roads, and that from such order no appeal was taken. These are the orders referred to in the report of the commission to the governor. But the order in controversy was made on June 25, 1903, to go into effect July 1, 1903, and is applicable solely to the Florida West Shore road. Now, whether this order of June 25, 1903, was simply operative to make the rates on the Florida West Shore road the same as those then obtaining generally in the State, or whether it made them higher or lower than such rates, does not appear. For some reason, not disclosed, the order touched only the local freight rates to and from the Florida West Shore Railway and over the Seaboard Air Line Railway. Even if the total receipts by the latter company from local freight rates were insufficient to meet what could properly be cast as a burden upon that business, such insufficiency would not justify it in an inequality of rates between different parts of the State, in one part too high and in the other too low. The State might properly insist that there should be equality in the rates—the conditions being the same—and if nothing more was accomplished by the order of the commission than to establish such equality we cannot hold that the judgment of the Supreme Court was erroneous.

With reference to the second of these cases, the order made by the railroad commission is said by the plaintiff in error to be an "irregular, unjust and unreliable method of rate fixing," and this upon the theory that the order makes the rate per mile the same for any distance, whether one mile or a hundred miles. It appears that 16.43 per cent of all the local freight business of the company in Florida comes from the

carrying of phosphates, and reference is made to several cases in which the courts have noticed the fact that the cost of moving local freight is greater than that of moving through freight, and the reasons for the difference. But evidently counsel misinterpret the order of the railroad commission. It does not fix the rate at one cent per ton per mile. It simply provides that it shall not exceed one cent per ton per mile, prescribes a maximum which may be reduced by the railway company, and if distance demands a reduction the company may and doubtless will make it. In addition it must be borne in mind that it is to be presumed that the railroad commission acted with full knowledge of the situation; that phosphates were in Florida possibly carried a long distance, the place of mining being far from the place of actual use or preparation for use. Further, when we turn to the report of the railroad company (which of course is evidence against it) we find that the company's average freight receipt per ton per mile in the State of Florida was $8\frac{15}{100}$ mills; so that the rate authorized for phosphates was nearly two mills per ton larger than such average. Under these circumstances it is impossible to say that there was error in the conclusions of the Supreme Court of the State, and its judgments are

Affirmed.

True copy.

Test:

Clerk Supreme Court U. S.